

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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W.P.No.9372 of 2007

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Dated:13.07.2007

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Between:

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M.V.S.Rama Krishna.

...Petitioner.

and

The A.P.State Cooperative Bank Limited and others.

...Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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W.P.No.9372 of 2007

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ORDER:

The petitioner challenges the order, dated 25.04.2007, passed by the A.P. Co-operative Tribunal, Visakhapatnam, in M.P.No.10 of 2006 in O.A.No.49 of 2006, refusing to condone the delay, in presenting the appeal against a recovery certificate, dated 13.01.2000, issued by the Deputy Registrar of Co-operative Societies, Hyderabad.

The 5th respondent herein, a private limited company, borrowed a sum of Rs.211.922 lakhs from the A.P. State Cooperative Bank Limited, the 1st respondent herein, in the year 1994. The petitioner was one of the Directors and he stood as guarantor for repayment of that amount. Since default was committed in repayment of the loan, proceedings under Section 71 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act') were initiated before the 3rd respondent. Recovery certificate, dated 13.01.2000, was issued, against the 5th respondent and other guarantors, including the

petitioner.

The petitioner presented an appeal before the Tribunal against the recovery certificate, dated 13.01.2000, together with M.P.No.10 of 2006, under Section 5 of the Limitation Act, to condone the delay of 2282 days. It was pleaded that he came to know about the recovery certificate, only when his property was brought to sale. The application was opposed, and ultimately, the Tribunal condoned the delay, through its order, dated 13.06.2006, by imposing costs of Rs.500/-. Thereafter, the appeal itself was allowed on 29.08.2006 and the matter was remanded to the 3rd respondent for fresh consideration and disposal. Later, at the instance of the 1st respondent, it was reviewed, *vide* order, dated 21.12.2006.

W.P.No.17329 of 2006 was filed, by the 1st respondent, challenging the order, dated 13.06.2006, passed by the Tribunal, condoning the delay. The petitioner, on the other hand, filed W.P.No.130 of 2007, feeling aggrieved by the order, dated 21.12.2006, reviewing the order passed in the appeal, being O.A.No.49 of 2006. Through a common judgment, dated 09.04.2007, this Court disposed of both the writ petitions, remanding the matter to the Tribunal for fresh consideration, on the question of condonation of delay. Thereafter, the Tribunal took up the matter and dismissed M.P.No.10 of 2006, mainly on the ground that the petitioner did not satisfy the Tribunal about the delay.

Heard learned Counsel for the petitioner, learned Government Pleader for Cooperation, learned Standing Counsel for the 1st respondent and Sri P.Venugopal, learned Counsel for respondents 6 to 14.

M.P.No.10 of 2006 was taken up by the Tribunal, as a consequence of the order passed by this Court in W.P.Nos.17329 of 2006 and 130 of 2007. The matter was taken up for hearing, for the first time, after remand, on 19.04.2007. The petitioner represented that he did not receive the copy of the order passed by this Court, and

accordingly, it was adjourned to 23.04.2007. On that day, he sought for an adjournment by one week, up to 30.04.2007. The Tribunal refused to grant adjournment, on the ground that a copy of the order was very much available with the petitioner, on 23.04.2007, and accordingly, proceeded to decide the matter on merits.

It hardly needs any emphasis that heavy burden rests upon the petitioner to explain the delay of 2282 days. Therefore, the petitioner was entitled to be given adequate opportunity to place the relevant material before the Tribunal and to convince it. The record discloses that the petitioner was not at all given an opportunity by rejecting the request to adjourn the matter by one week. It is not as if any time frame was fixed by this Court, or that any extraordinary situation emerged for denial of the adjournment. Even assuming that the copy of the order passed by this Court was available on 23.04.2007, it is not as if the petitioner was expected to swing into action forthwith. It is not known as to what prejudice the parties would have suffered, or what difficulty the Tribunal would have faced, had the matter been adjourned by one week. It is not in dispute that the stakes involved are very heavy and the delay is enormous. The Tribunal ought not to have acted in a dispassionate manner, while dealing with such a case. On the one hand, the Tribunal had virtually set the petitioner *ex parte* and on the other hand, proceeded to decide the matter on merits. Such course cannot be countenanced.

Hence, the Writ Petition is allowed and the impugned order is set aside. The Tribunal shall decide the matter afresh, and as a condition precedent, the petitioner shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs), within two weeks from today. The manner in which the said amount shall be dealt with, would depend upon the nature of order that the Tribunal may pass. To avoid further complications in the matter, it is directed that the petitioner shall deliver all the documents and papers to the Tribunal as well as the contesting respondents on the date of deposit of Rs.5,00,000/- itself. The Tribunal shall decide the application within four weeks thereafter. *Status quo* obtaining as on today shall be maintained till disposal of

M.P.No.10 of 2006. There shall be no order as to costs.

Dt.13.07.2007

L.NARASIMHA REDDY, J

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Note:Furnish C.C. in two days.
(B/o)
GJ